

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Construction Boards of Appeals

Municipal Utilities Authority and Sewerage Authority Escrow Appeals

Proposed Amendments: N.J.A.C. 5:23A-1.1, 1.2, 1.3, 1.4, 1.5, 2.1, 2.2 and 2.3

Authorized by: Susan Bass Levin, Commissioner, Department of Community Affairs

Authority: N.J.S.A. 40:14A-43 and 40:14B-76.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-

Submit written comments by [December 5, 2003](#) to:
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SUSAN BASS LEVIN, Commissioner

The agency proposal follows:

Summary

P.L. 1995, c.54 provides that developers may appeal the amounts of money required by a municipal planning board or governing body to be placed in escrow to cover the cost of improvements, or charges made against the escrow account by professionals working for the municipality, to the county construction board of appeals. P.L. 1999, c.11 extends that right of appeal to escrows required by, and professionals working for, municipal utilities authorities and sewerage authorities. The Department is therefore proposing to amend the implementing rules so as to include reference to P.L. 1999, c.11 along with reference to P.L. 1995, c.54. Other changes of an editorial nature

are made as well, including recognizing the change in the name of the unit within the Department that administers these rules.

A 60-day comment period has been provided for this proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C.1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

These amendments would make clear in the Administrative Code the jurisdiction already conferred by statute upon county construction boards of appeals in cases involving municipal utilities authority and sewerage authority developer escrows.

Economic Impact

Since these amendments would serve only to memorialize a change that has already been made by statute, they would have no economic impact.

Federal Standards Statement

No Federal standards analysis is required because these rules are not being proposed for amendment under the authority of, or in order to implement, comply with, or participate in, any program established under, Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Department does not expect that adoption of these amendments would result in the creation or loss of any jobs.

Agricultural Industry Impact

These amendments would have no impact upon the agricultural industry.

Regulatory Flexibility Statement

All developers, be they “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or not, are entitled by statute to appeal decisions of municipal utilities authorities and sewerage authorities regarding escrows to the county construction board of appeals. No reporting, recordkeeping or compliance requirements would be imposed on “small businesses” under this proposed amendment, nor would they be required to obtain any professional services they would not otherwise require.

Smart Growth Impact

These amendments would not have any impact upon “smart growth” policy or the implementation of the State Plan..

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

5:23A-1.1 Title; authority; scope; intent

(a) This chapter, which is promulgated under authority of N.J.S.A. 52:27D-124, 52:17D-198, **40A:14A-43, 40A:14B-76** and 40:55D-53.2a, shall be known as, and may be cited as, the “Rules Governing Construction Boards of Appeals.”

(b) This chapter shall govern all aspects of the administration and implementation by construction boards of appeals of the provisions of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.), the Uniform Construction Code rules (N.J.A.C. 5:23) and the subcodes incorporated therein by reference, the Uniform Fire Safety Act (N.J.S.A. 52:27D-192 et seq., the Uniform Fire Code (N.J.A.C. [5:18] **5:70** and associated rules, [and] P.L. 1995, c.54 **and P.L. 1999, c.11.**

(c) It is the intention of the Department of Community Affairs that these rules facilitate uniformity in procedure and a high level of quality in performance so as to allow construction boards of appeals to properly discharge the duties and functions that have been assigned to them by the Legislature under the State Uniform Construction Code Act, the Uniform Fire Safety Act, [and] P.L. 1995, c.54 **and P.L. 1999, c.11.**

(d)-(e) (No change.)

5:23A-1.2 Establishment of construction boards of appeals

(a)-(c) (No change.)

(d) Copies of all such resolutions, ordinances and interlocal agreements shall be filed by the governing bodies with the [Bureau] **Office** of Regulatory Affairs of the Division of Codes and Standards.

(e) In any municipality in which a municipal or joint construction board of appeals has been established, the county board of appeals shall only exercise jurisdiction in cases arising under P.L. 1995, c.54 **or P.L. 1999, c.11.**

(f) A municipality that either establishes or discontinues a municipal construction board of appeals, or either joins or discontinues participation in a joint municipal board, shall give prompt notice of such action to the county governing body, the county construction board of appeals and the [Bureau] **Office** of Regulatory Affairs of the Division of Codes and Standards. In the absence of a municipal or joint municipal board having jurisdiction, all appeals from a municipality shall be heard by the county board.

(g)-(h) (No change.)

5:23A-1.3 Membership of construction boards of appeals

(a)-(d) (No change.)

(e) Each county construction board of appeals shall also include two special members, one of whom shall be a licensed professional engineer with municipal site improvement construction experience and one of whom shall be a builder. The special members shall be appointed for four year terms and shall serve as additional members of

the board only in cases involving appeals of municipal **or municipal utilities authority or sewerage authority** fees pursuant to P.L. 1995, c.54 **or P.L. 1999, c.11.**

(f)-(g) (No change.)

(h) The board chairperson shall annually provide the [Bureau] **Office** of Regulatory Affairs of the Division of Codes and Standards with a list of the names and addresses of the regular, alternate and special members of the board and of the board secretary and any other contact person. Such information shall be updated whenever a change occurs.

5:23A-1.4 Post-appointment educational requirements for board members

(a)-(b) (No change.)

(c) The Department of Community Affairs may require that board members satisfactorily complete more specialized training consistent with their duties as board members including, without limitation, training concerning P.L. 1995, c.54 **and P.L. 1999, c. 11.** Special members and alternate special members shall be required to attend training concerning P.L. 1995, c.54 and **P.L. 1999, c. 11** within 12 months of appointment or within 12 months of announcement by the Department of Community Affairs of the availability of the course, whichever is later.

(d) (No change.)

5:23A-1.5 Board meetings

(a) Board meetings shall be held as often as may be necessary in order to comply with time limits for board action established by statute or by this chapter, but in no case shall a board schedule meetings less frequently than once a month.

1. Special meetings shall be scheduled when necessary by the chairperson of the board. Notice of any special meeting shall be given to all board members by telephone or fax transmission at least 48 hours prior to the time of the special meeting; provided, however, that notice of special meetings shall not be required to be given to special members of the board when the special meeting does not involve any cases arising under P.L. 1995, c. 54 **or P.L. 1999, c. 11.**

2. Public notice of all scheduled and special meetings shall be given, and meetings shall be open to the public, as required by the Open Public Meetings Act (N.J.S.A. 10:4-6 et seq.). Additionally, copies of all notices of meetings shall be provided by each board to the [Bureau] **Office** of Regulatory Affairs.

3. (No change.)

(b) (No change.)

(c) If there is no business pending before a board involving an appeal under P.L. 1995, c.54 **or P.L. 1999, c.11,** notice to that effect shall be given to the special members and any alternate special members, if time permits, by telephone or by fax transmission, at least 48 hours prior to the scheduled meeting.

(d) (No change.)

(e) Except as otherwise provided in (e)1 below, failure of a regular or special member to be present at more than 50 percent of all meetings of the board during any calendar year shall be considered good cause for removal by the appointing authority; provided, however, that any meeting during which the member would be disqualified from participating in all scheduled matters, pursuant to (d) above, or any meeting for

which arrangements were made in advance, with the consent of the chairperson, for the substitution of an alternate, shall not be considered in computing attendance for purposes of this subsection.

1. The attendance of special members shall not be required at any meeting at which no appeals under P.L. 1995, c.54 or P.L. 1999, c.11 are scheduled to be heard, and any such meeting shall not be considered in computing the attendance of the special members.

5:23A-2.1 Hearing applications

(a) (No change.)

(b) In cases arising under P.L. 1995, c.54 or P.L. 1999, c.11, an applicant for approval who is aggrieved by any charge to an escrow account or a deposit by any municipal or municipal utilities authority or sewerage authority professional or consultant, or the cost of the installation of improvements estimated by the municipal or municipal utilities authority or sewerage authority engineer, may file an appeal with the country construction board of appeals.

1. Any such appeal shall be filed within 45 days from receipt of the informational copy of the professional's voucher or the notice from the municipal or municipal utilities authority or sewerage authority engineer, as the case may be; provided, however, that if the professional has not supplied an applicant with an informational copy of the voucher, any appeal shall be filed within 60 days of receipt of the municipal statement of activity against the deposit or escrow account.

2. (No change.)

(c) The appeal shall be in writing and shall briefly set forth the appellant's position. It shall include the name and address of the applicant, the address of the building or site in question, and the permit number (if applicable), and shall reference the specific provision(s) of a statute or rule upon which the applicant is relying and set forth the extent and nature of the applicant's reliance upon such provision(s). The applicant may append to the written application any data or information that he or she may deem appropriate.

1. Upon receipt of a copy of the application for a hearing, the enforcing agency (or, in the case of an appeal under P.L. 1995, c.54 or P.L. 1999, c. 11, the municipality, the municipal utilities authority or sewerage authority, the approving authority and/or professional) shall provide the construction board of appeals with a copy of the full record of the application below, including a detailed explanation of the reasons for denial of the applicant's request.

(d) Simultaneously with the filing of any application for a hearing, the person filing the application shall provide a copy thereof to the local enforcing agency or, in the case of an appeal under P.L. 1995, c.54 or P.L. 1999, c.11, to the municipality or municipal utilities authority or sewerage authority, the approving authority and any professional whose charge is the subject of the appeal. Proof of compliance with this requirement shall be filed with the board secretary. Such proof may be in the form of a certified mail receipt, a signed receipt for personal delivery or a sworn statement.

(e) (No change.)

5:23A-2.2 Hearing procedures

(a) (No change.)

(b) A quorum of the board for cases arising under the State Uniform Construction Code Act or the Uniform Fire Safety Act shall consist of three regular and/or alternate members. A quorum of the board for cases arising under P.L. 1995, c.54 **or P.L. 1999, c.11** shall consist of four regular and/or alternate and/or special members.

(c) Except as otherwise provided in (d) below, when there are not five regular and/or alternate members present to consider an appeal, or if five regular and/or alternate members are present but a code discipline that is involved in a construction code case is not represented, or if no regular or alternate member who is certified as a fire official is present to hear a fire code case, or if either of the special members, or an alternate meeting the same qualifications requirement, is not present in a case arising under P.L. 1995, c.54 **or P.L. 1999, c.11**, either party shall be entitled to have the hearing adjourned. If neither party requests an adjournment, the case may be heard by the board if a quorum is present.

1. (No change.)

(d)-(f) (No change.)

5:23A-2.3 Board decisions

(a) Except as otherwise provided in (b) below, the construction board of appeals shall hear any appeal, render a decision thereon, and file its decision with a statement of the reasons therefore with the enforcing agency or, in the case of a matter arising under P.L. 1995, c.54 **or P.L. 1999, c. 11**, with the municipality or approving authority **or municipal utilities authority or sewerage authority**, not later than 10 business days following submission of the appeal. In any case involving an appeal from an action, decision, notice or order of a local enforcing agency, the decision shall either affirm, reverse or modify the action, decision, notice or order of the enforcing agency or remand the matter to the enforcing agency for further action. In the case of any reversal, modification or remand, the board shall include in its statement of reasons the specific details of the nature and extent of the board's disagreement with the enforcing agency.

1. (No change.)

2. Copies of decisions shall be filed with the Department of Community Affairs within 10 business days of the issuance of the decision as follows:

i. In cases arising under the State Uniform Construction Code Act or under P.L. 1995, c.54 **or P.L. 1999, c. 11**, with the [Bureau] **Office** of Regulatory Affairs of the Division of Codes and Standards; and

ii. (No change.)

3. (No change.)

(b)-(i) (No change.)

(j) A written decision shall contain the following:

1. (No change.)

2. A statement of pertinent facts, as follows:

i. (No change.)

ii. In a P.L. 1995, c.54 **or P.L. 1999, c.11** case, the statement shall include the nature of the service rendered to the municipality, **municipal utilities authority or sewerage authority**, the identification of the approving authority, the identification of the professional who rendered the service, the amount of time spent by

the professional or other persons in rendering the service, the amount charged for the service, the amount of that charge that is in dispute and the basis of the dispute. A copy of the professional's voucher or the municipal **or municipal utilities authority or sewerage authority** statement of activity against the deposit or escrow account, whichever is applicable, shall be appended to the decision.

3.- 4. (No change.)

5. The decision shall include the board's analysis of the case, including its understanding of the code provisions or other provisions of law applicable to the case.

i. (No change.)

ii. In any case arising under P.L. 1995, c.54 **or P.L. 1999, c.11**, the board shall provide a specific and detailed explanation of its basis for a determination that a disputed charge either is or is not valid and of its basis for any modification of any charge.

6. (No change.)